

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte GYOZO BAKI

Appeal No. 2004-0666
Application No. 09/744,035

HEARD: May 4, 2004

Before ABRAMS, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 5, which is the only claim pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a universal cartridge for a mixer faucet.

Claim 5 reads as follows:

Valve battery cartridge used for mixing cold water and warm water, comprises two discs (5,6) arranged one above the other to form a plane sealing together, wherein the lower disc (6) is a stationary inlet disc and the upper disc (5) is a control disc which is displaceable and rotatable on the inlet disc; where the control disc (5) is in mechanical connection with a driving arm (1) pivoted in a lever holder (2) through a ceramic moving element (4), the lever holder (2) is rotatably arranged in a cartridge casing (3), the base (9) of the cartridge casing (3) is formed with a connection element (14) for receiving an interchangeable insertion piece (10), wherein an opening for receiving the interchangeable insertion piece in the connection element is formed in a direction which is substantially parallel with a longitudinal axis of the cartridge, wherein the connection element (14) in the base (9) of the cartridge casing (3) receives the interchangeable insertion piece (10) which enables connection between connection ducts (13) in a valve battery body (12) and inlet openings, and wherein a longitudinal axis of the interchangeable insertion piece is substantially parallel to the longitudinal axis of the cartridge in the base (9) and the base (9) is provided with seal means (11) insulating the connection element from an inner space of the valve battery body (12).

Claim 5 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S.

Patent No. 5,806,552¹ to Martin, Jr. (Martin).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the final

¹ Issued September 15, 1998.

rejection (Paper No. 18, mailed February 11, 2003) and the answer (Paper No. 22, mailed August 6, 2003) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 21, filed July 14, 2003) and reply brief (Paper No. 23, filed August 15, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art patent to Martin, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Thus, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference are nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581, 212 USPQ at 326; Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). However, inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. See Mehl/Biophile Int'l Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305-06 (Fed. Cir. 1999); Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999).

Martin's invention relates primarily to fluid valves which control the mixing of hot and cold water wherein the flow path of the hot and cold water can be reversed (e.g., to facilitate back to back type installation in adjacent bathrooms). An adapter gasket is provided which has three independent pathways. In one position, the adapter effects respective fluid communication between hot and cold water inlet pipes and hot and cold water inlets in the stationary valve portion. In a second position, when the adapter gasket is removed from the valve body and turned over, communication between the hot and cold water inlet pipes and the hot and cold water inlets in the stationary valve portion is reversed. In both positions, the adapter gasket also effects communication

between the outlet of the valve and the outlet of a valve housing, and further it seals all connections at all times.

Figures 1 and 2 of Martin show a cartridge valve assembly 10 in conjunction with a faucet housing 11 that is mounted on a support 12 in the usual manner. The direction arrows in Figure 2 illustrate the pathway of water through the cartridge valve assembly 10 from the control unit 17 which supplies hot and cold water to the hot and cold inlets 23 and 24, respectively, in the faucet housing 11. Water travels upwardly through the valve assembly 10 and downwardly through the outlet 41 in the stationary disk 40, the outlet 26 in the base 32 of the valve, outlet 29 in the adapter gasket 50 and outlet 25 in the faucet housing 11 to where it returns to the control unit 17. There it will feed water to outlets 20 and 21 for a tub and shower fixture.

As best seen in Figures 1 and 3, a valve stem 18 extends upwardly from the cartridge valve assembly 10 and through the bonnet 15 for a connection with the handle

14. Martin teaches (column 3, lines 24-28) that:

The valve stem 18 controls the usual movable ceramic disk 43 with water passage 48 for movement over a stationary disk 40 as seen in Figure 2 for control of water from inlets 46 and 47 of disk 40 (See Figures 7 and 8) to outlet 41 in a customary manner.

In accordance with Martin's invention, and referring particularly to Figures 2, 3, 3A, and 3B, positioned below the base 32 of cartridge valve assembly 10 is an adapter gasket 50, which like valve assembly 10 fits into the valve housing 11. Guides 38 and 39 extending from base 32 fit into guide pockets 73 and 74 of the insert 51 of adapter 50. Guideposts 70 and 71 of insert 51 in turn fit into guide openings 16 and 22 of valve housing 11. Referring specifically to Figure 3A, extending through insert 51 is the previously described water outlet passage 29 as well as water inlet passages 56 and 57. These inlet passages and outlet communicate with a cavity 54 which receives a seal member 80. Surrounding outlet 29 and inlet passages 56 and 57 in the cavity are raised sealing sleeves 62, 61, and 60. There are in addition two raised annular sealing sleeves 65 and 66. These annular sealing portions 65 and 66 align with the inlets 23 and 24 of the valve housing 11 when insert 51 is placed thereon. Seal 80 has a pathway 81 which, when placed in the cavity 54, surrounds sleeve 62 of outlet passage 29. Seal 80 also includes two elliptical pathways 82 and 83 for surrounding the raised sleeves 61 and 60 of inlet passages 56 and 57 and the raised annular sealing sleeves 65 and 66 in a paired manner. This is best seen when viewing Figures 5A and 5B.

The appellant argues (brief, pp. 5-6) that Martin does not (1) anticipate the arrangement of two discs one above the other to form a plane sealing; (2) suggest that the lower disc be a stationary inlet disc and the upper disc be a control disc which is

displaceable and rotatable on the inlet disc; (3) anticipate that the control disc is in mechanical connection with a driving arm pivoted in a lever holder to a ceramic moving element; (4) anticipate that the lever holder is rotatably arranged in a cartridge casing; (5) anticipate an arrangement as set forth above wherein a base of the cartridge casing is formed with a connection element for receiving an insertion piece; and (6) anticipate an interchangeable insertion piece as claimed which is critical to the "universal" nature of the valve battery cartridge of the present invention. In essence, the appellant asserts that Martin does not show each and every claimed feature of the valve battery cartridge claimed in independent claim 5.

The appellant then states that during the prosecution of the instant application he has continuously requested the examiner to read Martin on the claimed subject matter, that is, point out the corresponding element in Martin for each and every element claimed in claim 5. The appellant asserts that the examiner has not done this and that the appellant cannot find in Martin each and every element as claimed.

The examiner's response to the appellant's argument (answer, p. 4) is as follows:

Martin, Jr. show a hot and cold mixing valve for mixing hot and cold water, see column 1, first sentence of the first paragraph. A movable valve element is rotatable to regulate flow from the hot and cold water inlets to the outlet, see column 1, lines 42-43. A movable disc 48 [sic, 43] forms a sealing plane with a stationary disc 40 below it to control the flow from the inlets to the outlet. Ergo, movable disc is rotatable.

Martin, Jr. is primarily concerned with the adaptor 50 and seal 80 and is brief in explaining the operation of the valve. The movable disc 48 [sic, 43] is rotated by stem 18, and Figure 1 shows the handle 14 at an angle to the stem, which suggests pivoting of the stem. Martin, Jr. say the valve works in "a customary manner".

Valves of this type, which rotate to modulate the water temperature and pivot to control the flow rate, and use a ceramic holding plate to hold the movable disc, are well known. EP 0 684 416 and Boiso '958, each of record, clearly show such customary features. Further, these features are recited in the preamble of [original] claim 5, which is a Jepson type claim and which indicates these features are known in the Prior Art.

A routineer in the art would therefore reasonably conclude that Martin, Jr. includes these customary features.

It is clear to us that each and every element as set forth in claim 5 is not found, either expressly or inherently described, in Martin. While Martin does state that his valve works in "a customary manner," Martin does not disclose, either explicitly or inherently, such structure. Specifically, Martin does not disclose a control disc, which is displaceable and rotatable on the inlet disc, in mechanical connection with a driving arm pivoted in a lever holder through a ceramic moving element wherein the lever holder is rotatably arranged in a cartridge casing. As such, claim 5 is not anticipated by Martin.²

² We note that no rejection of claim 5 under 35 U.S.C. § 103 is before us in this appeal. Accordingly, there is no need in this appeal to decide if it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Martin to have arrived at the claimed invention based on either EP 0 684 416, Boiso '958, or the admitted prior art set forth in the preamble of original claim 5, which was drafted as a Jepson type claim. Note, In re Fout, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

CONCLUSION

REVERSED

JEFFREY V. NASE
Administrative Patent Judge

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) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

Appeal No. 2004-0666
Application No. 09/744,035

Page 10

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